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May 20, 1985

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FEDERAL EXPRESS

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Attention: Wayne Kaplan, Esq.

Re: Application of the Premarmer Notification
Rules of the Hart-Scott-Rodino Antitrust
Improvements Act of 1976

Gentlemen:

Reference is made to our previous telephonic communication with Mr. Wayne Kaplan of the Federal Trade Commission (the "Commission") Staff in respect of the application of the Premarmer Notification Rules of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") to the contemplated asset acquisitions described hereinbelow (the "Transactions"). This letter constitutes our request, pursuant to Section 803.30 of the Commission's Rules implementing the Act (the "Rules"), for a Commission Staff interpretation confirming that the parties (or any affiliates thereof) to the Transactions are not required, in connection therewith, to file the Antitrust Improvements Act Notification and Report Form established under the Act and Rules.

Background of the Transactions

The Transactions, when consummated, will effect the acquisition by our client ("Buyer"), pursuant to two separately negotiated Asset Purchase Agreements, of two cable television systems operating in [REDACTED]. Buyer is a recently organized wholly-owned subsidiary of a communications company that currently owns and operates, through other wholly-owned subsidiaries, 5 cable television systems in two western states. None of such 5 cable

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television systems is located within 400 miles of either of the two systems to be acquired.

The material terms of the Transactions are as follows:

A. Transaction 1. Buyer has agreed, subject to the requisite governmental and regulatory approvals, to purchase substantially all of the assets of a corporation (the "Corporate Seller"), which currently owns the smaller of the two cable television systems to be acquired by Buyer, for an aggregate purchase price of \$1,050,000. In addition thereto, Buyer will assume certain liabilities of the Corporate Seller arising under executory contracts. All of the issued and outstanding stock of the Corporate Seller is owned by one individual (the "Shareholder").

B. Transaction 2. Buyer has agreed separately, subject to the requisite governmental and regulatory approvals, to purchase substantially all of the assets of a limited partnership (the "Partnership Seller"), which currently owns the larger of the two cable television systems to be acquired by Buyer, for an aggregate purchase price of \$14,200,000. In addition thereto, Buyer will assume certain liabilities of the Partnership Seller arising under executory contracts which will not exceed \$800,000. The Partnership Seller is composed of two corporate general partners and 34 limited partners. One of such corporate general partners is a corporation owned and controlled by the Shareholder.

Except as indicated herein with respect to the Transactions, there are no relationships between Buyer and either the Corporate Seller or the Partnership Seller.

Application of the Act and Exemption Therefrom

The application of the Premarmer Notification Rules of the Act to a particular transaction requires the satisfaction of three tests (the "Jurisdictional Requirements"): (i) the Commerce Test (15 U.S.C. §18a(a)(1)); the Size-of-the-Parties Test (15 U.S.C. §18a(a)(2)); and the Size-of-the-Transaction Test (15 U.S.C. §18a(a)(3)). Even if a transaction satisfies the Jurisdictional Requirements and would ordinarily require compliance with the Premarmer Notification Rules, it may qualify for one of the exemptions established in 15 U.S.C. §18a(c) or Part 802 of the Rules.

Section 802.20 of the Rules sets forth the "Minimum Dollar Value" exemption which provides in pertinent part that:

An acquisition which would be subject to the requirements of the Act and which satisfies section 7A(a)(3)(A), but which does not satisfy section 7A(a)(3)(B), shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would not hold:

(a) Assets of the acquired person valued at more than \$15 million;

* * * * *

The effect of Section 802.20 is to exclude from the coverage of the Premarmer Notification Rules all asset acquisitions valued, in accordance with the Act and Rules, at \$15 million or less.

If it is assumed for the purposes of this request letter only that each of Transactions 1 and 2 satisfies the Jurisdictional Requirements, we are of the belief that the Minimum Dollar Value exemption set forth at Section 802.20 of the Rules would be available to exempt individually each of such Transactions from the coverage of the Act, absent the application of the aggregation rules referenced below. Such a belief is predicated, of course, on the assumption that the assets to be acquired in each of the two Transactions have been valued properly (including the assumption of liabilities) in accordance with the Act and Rules and that such valuations are not in excess of the threshold amount.

Potential Aggregation of the Transactions: Application of Sections 801.13 and 801.14 of the Rules

The joint application of Sections 801.13 and 801.14 of the Rules requires, for the purposes of Section 7A(a)(3)(B) of the Act (relating to the Size-of-the-Transaction Test), that the value of all assets to be acquired from an "acquired person" be aggregated. The aggregation of Transactions 1 and 2 above, if required by the Act and Rules, would result in Buyer acquiring assets with a value in excess of \$15 million, the effect of which would be the loss of the Minimum Dollar Value exemption at Section 802.20 of the Rules.

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A determination that the Transactions be aggregated is dependent upon the conclusion that each of the two Sellers, the Corporate Seller and the Partnership Seller, be deemed the same "acquired person" for purposes of the application of Sections 801.13 and 801.14 of the Rules. Such a conclusion could evolve only as a result of the Shareholder's participation in each of the Partnership Seller and Corporate Seller.

However, we understand, as confirmed orally, that the Commission Staff has adopted the position that a partnership (either general or limited) is, for purposes of the Act and Rules, its own ultimate parent entity not controlled by any other entity. As a result thereof, and in accordance with the definitions contained in the Act and Rules, we believe that the Corporate Seller and Partnership Seller are not to be construed as the same "acquired person." Accordingly, it is our further belief that each transaction, as described and represented herein, is exempted from the application of the Act and Rules as a result of the Minimum Dollar Value exemption at Section 802.20 of the Rules, and that no filings by any of the parties (or affiliates thereof) are required as a result of the Transactions.

Request for Confirmation

We hereby request the Commission Staff's interpretation confirming, based upon the representations contained herein, that the Corporate Seller identified in Transaction 1, and the Partnership Seller identified in Transaction 2, are not the same "acquired person" for purposes of the Act and Rules, and as a result thereof and the application of the Minimum Dollar Value exemption at Section 802.20 of the Rules, that Buyer, the Corporate Seller, and the Partnership Seller, or any affiliates of such parties, are not subject to the Act and Rules and need not file the Antitrust Improvements Act Notification and Report Form required thereunder as a result of the Transactions.

If you have any questions or require additional


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information, please contact the undersigned at the above
letterhead address. Thank you for your prompt attention to
this matter.

Very truly yours,

A large, dark, irregularly shaped redacted area covering the signature and possibly the name of the undersigned.A small, dark, horizontal redacted line.